

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 6002(b) of)	
the Omnibus Budget Reconciliation)	
Act of 1993)	WT Docket No. 06-17
)	
Annual Report and Analysis of)	
Competitive Market Conditions With)	
Respect to Commercial Mobile Services)	

COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

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SUMMARY

By these comments, CTIA-The Wireless Association® (“CTIA”) responds to the Commission’s request for information regarding the state of competition in the wireless industry for incorporation into the *Eleventh Annual CMRS Competition Report*.

As CTIA stressed in its comments in the *Tenth Annual CMRS Competition* docket, “Competition is not to be equated with a specific number of competitors in a market, rather it is to be found in the marketplace – in its operations, in the carrier and customer behaviors manifested, and consumer benefits generated.” The data available from multiple public sources continues to show that the wireless industry is highly competitive, delivering innovation, choice and competitive prices to consumers. The wireless industry is demonstrably competitive, and is producing great benefits for both new and existing individual and business users of traditional wireless services and new service offerings, from text-messaging to mobile Internet access and a host of multi-media applications now offered in the U.S. There is no evidence that carriers are restricting output, slowing innovation, or raising prices. Instead, output is increasing as the wireless industry continues to attract new subscribers, those subscribers continue to increase their consumption of minutes and messages, and prices continue to fall.

From June 2004 to June 2005, wireless companies added a record 25 million customers, and by year-end 2005 there were more than 200 million wireless customers. In June 1992, before the Omnibus Budget Reconciliation Act of 1993, the average wireless bill was \$68.51 per month. As of June 2005, the average wireless bill was less than \$50 per month. In fact, in 1992 dollars, the average wireless bill in 2005 was equal to \$35.57 – almost less than half the earlier bill. In 1995, the average wireless customer

used about 115 minutes of use per month. In 2005, the average wireless customer used almost 700 minutes of use per month. In 1995, there were 37 billion minutes of use on wireless networks. In 2004, the wireless industry crossed the one trillion minutes of use threshold – and there were 675 billion minutes used in the first half of 2005 alone.

Indeed, the wireless industry is on the verge of a new Renaissance as carriers get access to more spectrum and deploy new technologies and applications. Nonetheless, Commission action is needed on a number of long-standing issues in order to continue to promote competition and consumer benefits. In particular, the FCC should take steps to address mounting concerns that inconsistent state-by-state regulation of the carrier-customer relationship threatens the innovation and efficiency that have been hallmarks of the wireless industry. CTIA urges the FCC act on a petition for declaratory ruling that early termination fees are part of wireless carriers' rate structure and therefore cannot legally be regulated by the different states. CTIA also asks the FCC to preempt state truth-in-billing regulations, and only if necessary to address instances of market failure, adopt federal regulations modeled on the CTIA Consumer Code for Wireless. CTIA also seeks action in the areas of spectrum allocation and management, intercarrier compensation, and universal service in order to better facilitate wireless carriers' ability to deploy existing and advanced mobile wireless services in both urban and rural areas.

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COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

CTIA-The Wireless Association® (“CTIA”)¹ hereby submits the following comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) January 18, 2006 *Public Notice* requesting data and information regarding the status of competition in the CMRS industry, including “comment on which indicators are useful for analyzing competitive market conditions with respect to CMRS, and also on what specific criteria should be used to determine whether there is effective competition among CMRS providers.”²

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² *WTB Seeks Comment on CMRS Market Competition*, WT Docket No. 06-17, DA 06-62, released January 18, 2006 (hereinafter “Notice”). Section 332(c)(1)(C) of the Telecommunications Act requires the FCC to conduct an annual review of competitive market conditions in the CMRS marketplace, and produce an annual report analyzing those conditions, that must include “an identification of the number of competitors . . . , an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional

As the Commission recognized in the Notice seeking comment, “Congress established the promotion of competition as a fundamental goal for Commercial Mobile Radio Services . . . policy formulation and regulation.”³ CTIA notes that this goal is an affirmative one – it is more than “do no harm.”⁴ The Commission has attempted to fulfill the goal of promoting competition in several post-1993 decisions regarding the regulatory treatment of CMRS services;⁵ however, it is a goal that requires governments to resist the temptation to substitute regulatory fiat for an effectively-functioning competitive

providers or classes of providers in those services would be likely to enhance competition.”

³ *Id.*

⁴ Although the Commission should be conscious of the potential for the unintended and harmful consequences of regulatory actions. As Professor Michael L. Katz cautioned, the Commission should be conscious that “government intervention in even imperfectly competitive markets may harm consumers,” and it should be “wary of regulations that constitute ‘backdoor’ price regulation . . . which limit and distort competition.” Michael L. Katz, “Measuring Competition Effectively,” filed with the Reply Comments of CTIA in WT Docket No. 04-111, May 10, 2004, at 3

⁵ See, for example, the Commission’s recent action to address delays in siting communications facilities, *Declaratory Ruling, In the Matter of Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations Under the Nationwide Programmatic Agreement*, FCC 05-176, released October 6, 2005. See also the Commission’s 1995 denial of petitions to reinstate state rate regulation, preempted under the 1993 Omnibus Budget Reconciliation Act, and the Commission’s 2000 and 2001 determinations to provide greater flexibility and to relieve CMRS providers from spectrum caps. See e.g., *Petition of the Connecticut Dept. of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut*, 10 FCC Rcd. 7025 (1995), *aff’d sub nom. Connecticut Dept. of Public Utility Control v. F.C.C.*, 78 F.3d 842 (2d Cir. 1996). See also *In the Matter of Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, 15 FCC Rcd. 14680 (2000) (increased flexibility) and see *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, 16 FCC Rcd. 22668 (2001).

marketplace. The results for consumers from the last 12 years of a light regulatory touch at the federal level have been tremendous, as will be discussed herein. But there is more the Commission can do to further Congress' directive to promote competition in the wireless industry. Indeed, since the nation is on the verge of a wireless Renaissance, with more spectrum being brought to market, and wireless providers deploying new technologies and new service applications (such as mobile broadband Internet access, mobile television and other advanced services) at an increasing rate, it is crucial that the Commission commit to addressing issues that are now frustrating carriers' ability to roll out service in some markets, issues that threaten to impede the continued evolution of the wireless industry. CTIA believes the sky is the limit, but only if certain key regulatory issues in the areas of consumer regulation, spectrum, intercarrier compensation, and universal service are addressed.

The following Comments respond to the Commission's notice by providing both data and guidance to public information describing the competitive performance of the wireless industry in 2005. They also note where the Commission must act in order to continue to promote the benefits of competitive wireless services for consumers and the U.S. economy.

I. Analytic Framework and Sources

Although the Telecommunications Act requires the preparation of an annual analysis of the state of competition in the wireless industry, this does not mean that the Commission's analysis must begin, *ab initio*, with a blank slate. The Commission's historical record, assembled over the course of ten successive dockets, and the

Commission's repeated findings that the wireless industry is effectively competitive in both rural and urban markets, constitute a reference point from which the Commission can and should build its current docket.

CTIA does not itself possess carrier-specific or granular, market-level information (e.g., carrier-specific marketing and build-out information, or sub-national penetration and usage data).⁶ Nonetheless, CTIA welcomes this opportunity to provide the Commission with its observations as to the proper context in which to evaluate the wireless industry's competitive performance and to draw the Commission's attention to sources of information to help both the Commission and Congress understand the current state of competition in the wireless industry.

As in past years, CTIA notes that public data is available with respect to total subscribership, aggregate minutes of use (MOUs), employment, investment, and revenues from a number of sources, including CTIA's semi-annual wireless industry survey, the National Telecommunications Cooperative Association's annual survey, and the reports of financial and industry analysts at Merrill Lynch, UBS Equity Research, The Yankee Group, ABI Research, Informa Telecoms & Media Group, Paul Kagan Associates, Econ One, and a host of others. For example, the data published in Merrill Lynch's quarterly matrix reports (such as the *Global Wireless Matrix 3Q05*, published December 22, 2005, and the *US Wireless Matrix 3Q05*, published November 28, 2005)

⁶ Indeed, as CTIA has noted in the past, granular-level information about carrier conduct and consumer behavior is highly sensitive. *See e.g.*, Comments of the Cellular Telecommunications & Internet Association, In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 04-111, filed April 26, 2004, at 3 (CTIA 2004 Competition Comments).

includes data on subscribership, churn, incremental capex, average monthly MOUs per subscribers, and revenue per minute, among other indicators. UBS Equity Research's *Wireless 411, Version 18.0 (Revised)*, published January 3, 2006, also includes information on subscribership, churn, incremental capital investment, average monthly MOUs per subscriber, as well as incremental cell sites, and data revenues. Depending on the indicator and the edition of the report, the quarterly time series of this data may begin as early as the first quarter of 2000 and run through the third quarter of 2005.⁷ Both the *US Wireless Matrix 3Q05* and the *Wireless 411, Version 18.0 (Revised)* reports include coverage of these indicators on an individual company basis for approximately 17 to 20 national, regional and affiliate or independent operators, who in the aggregate serve about 95.6 percent of all U.S. wireless subscribers as of the third quarter 2005. The Merrill Lynch *Global Wireless Matrix 3Q05* includes comparative information on these and other indicators on an aggregate, national basis for 47 countries around the world, making it possible to contrast national trends in subscriber growth, ARPU, MOUs per subscriber, and churn from 2000 through the third quarter of 2005. This report also includes an industry snapshot by region for the most recent quarter of this data, as well as time-series

⁷ For example, Merrill Lynch's *US Wireless Matrix 3Q05* and the UBS *Wireless 411, Version 18.0 (Revised)* reports present information from the first quarter 2003 through third quarter 2005. Earlier editions of these reports present data from the first quarter of 2000 through the latest quarters then reported. *E.g.*, the *Wireless 411, Version 4.0* report published April 22, 2002 covers the period from first quarter 2000 through the fourth quarter 2001. The *Wireless 411, Version 12.0*, published April 16, 2004, covers the period from the first quarter 2002 through the third quarter 2003. Merrill Lynch's *The Matrix – 4Q01*, published March 22, 2002, presents data from the first quarter 2000 through the fourth quarter 2001. The Merrill Lynch *US Wireless Matrix 3Q03*, published November 25, 2003, reports data from the first quarter 2001 through the third quarter 2003.

data for the major service providers for these 47 countries beginning as early as the first quarter of 2000.⁸

II. Competition Works for Consumers

The best indicia of competition are found in the marketplace – in its performance, in carrier and customer behaviors, and in the consumer benefits provided. Among the indicators to which the Commission should pay heed are investment, innovation, customer choice, and the demonstrated ability of customers to exercise those choices.⁹ In fact, as the following will show, public market data reveals that the wireless industry *is* performing competitively – multiple providers are investing, offering consumers a wide variety of service options, and attracting new subscribers, while wireless subscribers are choosing to increase their minutes of use.¹⁰ There is no evidence that carriers are

⁸ See e.g., Glen Campbell, *Global Wireless Matrix 3Q05: The Latin Quarter*, December 22, 2005, at Tables 1 (Industry Snapshot by Region – 3Q05), 27 (Net Monthly Churn), 30 (Average Revenue Per User), and 32 (Monthly Minutes of Use Per Subscriber), and Section 4 (Country Tables).

⁹ Consistent with the “range of standard indicators commonly used for the assessment of effective competition,” as the Commission noted in the *Ninth Report. In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Ninth Report*, 19 FCC Rcd. 20597 (2004) (*Ninth Report*) at para. 8.

¹⁰ See e.g., David Janazzo, *et al.*, *Tower Outlook Still Positive, Raising POs*, Merrill Lynch, January 31, 2006, at 2 (estimating year-end wireless penetration reached 70%, and monthly MOUs per subscriber exceeded 800). CTIA’s Semi-Annual Wireless Industry Survey as of midyear 2005 indicated subscribership grew by more than 25 million from June 2004 to June 2005, and total MOU growth of more than 30%, from 516 billion in the first six months of 2004 to 675 billion in the first six months of 2005. See CTIA Semi-Annual Survey Results Summary at http://files.ctia.org/img/survey/2005_midyear/slides/MidYear_3.jpg. See also *CTIA’s Wireless Industry Indices: Semi-Annual Data Survey Results, A Comprehensive Report from CTIA Analyzing the U.S. Wireless Industry, Mid-*

restricting output, slowing innovation, or raising prices. Rather, wireless companies are providing increasing capacity and capabilities, and consumers are responding by consuming the resulting products in growing quantities in the form of voice minutes, text messages, downloaded information (news, video or and audio clips), e-mail, web and office systems access, and other multimedia content.

A. Consolidation, Entry, and Choice

Although a number of high-profile mergers have occurred in the wireless industry over the past few years, the total number of commercially operational wireless companies has remained relatively constant, with more than 180 facilities-based companies identifiable (via their websites) as directly offering wireless service to consumers in markets across the country.¹¹ Additionally, as is detailed below, numerous Mobile Virtual Network Operators (MVNOs) have launched or announced the launch of service, including Disney, ESPN, TracFone, and Virgin Mobile, among others. The facilities-based companies are described as national, regional, affiliate, and independent operators by analysts and companies alike. Moreover, facilities-based licensees continue to announce the initiation of service, expansion of networks, and the construction of new cell sites.¹² They also continue to modify their market holdings in order to establish

Year 2005 Results, released November 2005, Table 118 at page 230 (reported industry MOU results) (hereafter “*CTIA’s Wireless Industry Indices*”).

¹¹ In fact, the total number of companies offering wireless service to consumers is in excess of 180, although some may be providing service in conjunction with other companies (as local partners to national or regional providers), via resale or MVNO relationships, or other low-profile (non-web publicized) arrangements.

¹² For example, Revol Wireless recently announced the launch of service in Canton, Youngstown, and Columbus (Ohio), and Indianapolis, expanding its coverage

footprints they believe allow them “to more effectively provide value and services to customers,”¹³ as well as more robust spectrum holdings in order to deliver more spectrum-intensive services to more people.¹⁴ For example, the Commission’s *Memorandum Opinion and Order* approving the merger of Sprint and Nextel took note of the potential benefits to customers from the combination, including faster data rates and interoperability between push-to-talk capabilities.¹⁵ Likewise, Cingular Wireless noted

beyond markets already served in Ohio, Indiana, and Pennsylvania. *See* “Revol expanding into four markets,” *RCR Wireless News*, February 6, 2006. *See also* “Leap Launches Its Cricket(R) Unlimited Wireless Service in Fresno, Calif.; Addition of Fresno Greatly Expands Cricket’s Central Valley Footprint,” Press Release, August 1, 2005, at <http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=737426&highlight=>. *See* “Cingular Completes Indiana Network Integration, Cingular and AT&T Wireless Networks Now Fully Combined,” Press Release, December 13, 2005, at http://cingular.mediaroom.com/index.php?s=press_releases&item=1399 (announcing construction of 30 new cell sites in Indiana); “Alltel expands coverage in Western Wireless markets with new rate plans,” Press Release, October 17, 2005, at <http://www.alltel.com/corporate/media/news/05/oct/n411oct1705a.html> (announcing availability of expanded local coverage and new flat-rate Axxcess Messaging Packs that let customers send and receive any combination of text, picture or video messages). *See also* “Pioneer Enters Third Stage of Cellular Service Expansion,” Press Release, December 14, 2005, at http://www.ptci.com/Main.php?do=lob_press&cat=C&lob=coopnews&id=45 (noting progress in expanding coverage areas via CDMA 1X technology).

¹³ Doug Hutcheson, Leap President and CEO, quoted in Dan Meyer, “Leap, Revol clump markets,” *RCR Wireless News*, November 14, 2005, regarding Leap’s “market clustering philosophy” intended to allow “customers to use their unlimited calling service when making calls from adjacent markets.”

¹⁴ *See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Tenth Report*, WT Docket No. 05-71, released September 30, 2005 (“*Tenth Report*”) at para. 57.

¹⁵ *See Applications of Nextel Communications, Inc., and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, FCC 05-148, released August 8, 2005, at paras. 134-136. *See also* “Sprint Nextel Completes Merger, Existing Sprint and Nextel Customers Will Continue

its on-going upgrading of the combined network resulting from the acquisition of AT&T Wireless' operations, and the greater capabilities offered by its increased spectrum holdings.¹⁶ Companies also continue to work to ease consumer access to both traditional services and new applications.¹⁷

With Current Services and Plans,” Press Release, August 12, 2005, at http://www2.sprint.com/mr/news_dtl.do?id=7760 (reflecting commitment to continuity of service, and on-going innovation); *and see* “Sprint Launches the Latest Innovation for Nextel Walkie-Talkie Services - Nextel Direct Send(SM) Picture; Nextel Direct Send(SM) Picture is the first walkie-talkie application in the industry that allows picture sharing between recipients while on a walkie-talkie call,” Press Release, November 7, 2005, at http://www2.sprint.com/mr/news_dtl.do?id=9000.

¹⁶ *See Applications of AT&T Wireless Services, Inc., Transferor, and Cingular Wireless, Corp., Transferee, Memorandum Opinion and Order*, 19 FCC Rcd. 21522 at paras. 29, 224 and n.112 (2004). *See also* Cingular's press release archives for data on the on-going upgrades to their networks. *See e.g.*, “Cingular Wireless Completes Major Upgrade in El Paso; Commitment increases El Paso cell sites by 45 percent in one year; part of \$470 million plan in Texas,” Press Release, November 9, 2005, at http://cingular.mediaroom.com/index.php?s=press_releases&item=1369; “Cingular Wireless Raises the Bar for Arizona Customers by Investing More Than \$100 Million Throughout the State; Investment Will Enhance Service Quality and Expand Coverage for Arizona Customers,” Press Release, October 12, 2005, at http://cingular.mediaroom.com/index.php?s=press_releases&item=1335; “Cingular Wireless Turns on 25 New Cell Sites in East Tennessee, Coverage Improved in Tri-Cities, Huntsville, Oneida, Wartburg, Loudon, Clinton, Crossville, & Cookeville,” Press Release, October 12, 2005, at http://cingular.mediaroom.com/index.php?s=press_releases&item=1323; *and see* “Cingular Wireless to Invest \$62.3 Million Dollars in Ohio to Enhance Service Quality and Expand Coverage, Company to Build 117 Cell Sites to Better Serve its ALLOVER(SM) Network Customers,” Press Release, August 26, 2005, at http://cingular.mediaroom.com/index.php?s=press_releases&item=1244.

¹⁷ *See e.g.*, “Sprint Offers Free Voice-Dialing Services for Customers Who Are Blind or Disabled to Dial Calls on Their Sprint PCS Phones Simply by Speaking,” Press Release, June 30, 2005, at http://www2.sprint.com/mr/news_dtl.do?id=7120. *See also* “T-Mobile USA and Sprint Make it a Snap for Customers to Share Pictures and Text Messages,” Press Release, July 7, 2005, at <http://www.t-mobile.com/company/pressroom/pressrelease142.asp> (announcing MMS

In addition to facilities-based companies, dozens of MVNOs either offer, or are preparing to offer, service.¹⁸ These include:

Selected MVNOs
AMP'd Mobile
Cbeyond
Disney Mobile
EZ Link
Firefly Mobile
Helio
Liberty Wireless / Viva Liberty
Mobile ESPN
Qwest
7-Eleven
TracFone
TúYo Mobile
Uphonia
Virgin Mobile USA
Voce

interoperability). *See also* “Leap Announces Picture Messaging Interoperability Agreement with Cingular Wireless and U.S. Cellular; Leap's Cricket(R) Customers Can Exchange Photos with Cingular and U.S. Cellular Customers via Their Mobile Camera Phones, Press Release, July 25, 2005, at <http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=734043&highlight=>.

¹⁸ *See* Kelly Hill, “MVNO competition spreading to MVNEs,” *RCR Wireless News*, February 6, 2006. *See also* Susan Mazonson, “In our space: Competition is intense as MVNOs proliferate in the prepaid wireless sector,” *Intele-CardNews*, originally in print July 1, 2004, at http://www.intelecard.com/factsandfigures/03factsandfig.asp?A_ID=406. *See* Eric Gwinn, “Coming soon: A cell phone just for people like you,” *Chicago Tribune*, January 31, 2006 (about the launch of Mobile ESPN).

Last year, *RCR Wireless News* published a list of 19 active MVNOs and resellers, estimated to serve a minimum of 10.6 million customers, indicating whether they offered prepaid, postpaid, or hybrid service plans to consumers.¹⁹ More recent articles have noted the continued growth in MVNO-related subscribership.²⁰ The Commission's semi-annual *Local Telephone Competition* reports also have, since December 1999, reported on the percentage of wireless customers served by resale on a nationwide and state-by-state basis. The most recent *Local Telephone Competition* report indicated that as of December 2004 nine percent of wireless subscribers nationwide were served through resale.²¹ Companies like The Yankee Group, ABI Research, and others have noted the evolution of both players and plans over the past few years, as MVNOs enter the market, and as facilities-based providers develop or re-invent brands, explore new relationships, and develop new offerings.²² The proliferation of prepaid and hybrid plans

¹⁹ See "By the Numbers: MVNOs/Resellers," *RCR Wireless News*, July 25, 2005, at 12.

²⁰ See e.g., Kelly Hill, "Tracfone high on 4Q growth, ends 2005 with 6.1 million customers," *RCR Wireless News*, February 8, 2006, at <http://www.rcrnews.com/news.cms?newsId=25570>.

²¹ See *Local Telephone Competition Report*, released July 8, 2005, at Table 13, at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0705.pdf.

²² See e.g., Linda Barrabee, "Family Plans Approaching Saturation; Prepaid/Hybrid in Driver's Seat for Future Teen Growth," Yankee Group, July 25, 2005. See also Marina Amoroso, "For Prepaid to Grow, It Needs to Become a First-Class Wireless Service," Yankee Group, July 13, 2005. See also Sue Marek, "Prepaid Renaissance: To attract new customers, U.S. operators are retooling their prepaid plans. The challenge is keeping airtime rates competitive and acquisition costs to a minimum," *Wireless Week*, June 1, 2005, at <http://www.wirelessweek.com/article/CA605904.html?spacedesc=Features>. See also D. Douglas Graham, Prepaid Wireless, *Intele-Card News*, November 1, 2005, at <http://www.intelecard.com/specialsection/03focuson.asp>.

has prompted a number of third-party operated websites to include features allowing consumers to compare packages and their features across carriers.²³ Websites like www.MountainWireless.com and www.wirelessadvisor.com provide capsule reviews of and feedback about carriers' coverage and offerings.

B. Service Availability and Use

The Commission's prior CMRS competition reports have demonstrated graphically (via maps included in their appendices) the broad availability of wireless service. Service providers' own websites, and the websites of third-parties such as www.myrateplan.com also include zip code capabilities which permit would-be consumers of wireless service to determine the availability of service from either individual companies, or from an array of facilities-based providers and major MVNOs. And, as previously noted, the websites of carriers and third-party consumer-oriented websites such as www.myrateplan.com also permit consumers to compare service plans – either selecting from a general pool of individual plans, or from among a variety of rival family, prepaid, or hybrid prepaid plans. Likewise, as previously noted, companies have re-invented their prepaid plans to create hybrids which more closely resemble traditional contract plans, and prepaid customers can now purchase phones like the Motorola Razr or other high-end handsets in conjunction with these plans.²⁴ Prepaid customers can also

²³ See e.g., the Hybrid Prepaid Comparison Chart available from CellGuru.net at http://www.cellguru.net/prepaid_hybrid_compare.htm. See also the selection of plan types (traditional prepaid, hybrid prepaid, all-you-can-talk prepaid, family plan, and single line plans) reviewable through www.myrateplan.com.

²⁴ For example, the Motorola Razr V3 is available with Cingular Wireless' GoPhone Pick Your Phone plan, and T-Mobile USA's T-Mobile To Go plan.

purchase add-on wireless data packages, as well as traditional voice services combined with a variety of calling features.²⁵

CTIA's semi-annual wireless industry survey has tracked the growth of total wireless subscribership, and aggregate minutes of use and text messages, as well as the number of prepaid subscriptions to the facilities-based service providers. Thus, CTIA's survey has tracked the growth in subscribership from 11 million customers at the end of 1992 (prior to the Omnibus Budget Reconciliation Act of 1993), to 34 million at the end of 1995, to 194.5 million as of June 2005. And it is estimated that by year-end 2005, there were more than 200 million wireless customers in the United States. In effect, wireless companies added almost 170 million customers to their rolls in just ten years.

The CTIA survey elicited data from carriers that a total of 516 billion billable minutes were used in the first six months of 2004. A year later, carriers reported customers used 675 billion minutes in the first six months of 2005 – a growth of 30.8 percent year-over-year.²⁶ Likewise, CTIA's semi-annual survey found that a total of 7.25 billion text messages were sent in the 30-day period of June 2005. By contrast, in the 30 days of June 2004, wireless customers sent 2.86 billion text messages.²⁷ CTIA's survey

²⁵ The features available with many prepaid calling plans now include basic voice mail, call forwarding, call waiting, caller ID, nationwide long distance, three-way calling, free mobile-to-mobile calling, as well as add-on capabilities such as enhanced voice mail, text messaging, ringtone game and music downloads, multimedia messaging, and access to information such as news, weather, sports, e-mail, and web-searching capability. *See e.g.*, Cingular Wireless' GoPhone Pick Your Plan details; T-Mobile USA's T-Mobile To Go plans; and Verizon Wireless' INPulse plans for examples of included, add-on, or pay-as-you go features.

²⁶ *CTIA's Wireless Industry Indices, op cit.*, at 230, Table 118 (Reported Industry MOU Results – Six-Month Intervals).

²⁷ *Id.* at 239, Chart 64 (Monthly SMS Traffic Volumes: June 2000 – June 2005).

data also allows calculation of an average number of minutes used monthly by subscribers. In the first six months of 2004, subscribers averaged 559 MOUs a month. By the first six months of 2005, this had risen to 689 MOUs a month.²⁸ As previously noted, Merrill Lynch and UBS also publish average monthly MOU data, via their quarterly reports, on a carrier-specific basis for 17 to 20 national, regional, affiliate and independent companies.²⁹

C. Network and Applications Deployment

The Commission requests comment on the deployment of new network technologies since the *Tenth Report* – including with respect to what portion of carriers’ license / network footprints such technologies have been deployed, and what applications are being supported via those technologies. On an aggregate basis, Merrill Lynch’s *Global Wireless Matrix 3Q05* includes a table summarizing subscribership by technology (in both total numbers and as percentages of total subscribership) as of the third quarter 2005 for 47 countries, from Argentina to Venezuela, including the United States, as well as a table noting the launch of WCDMA/UMTS or CDMA200 1xEV-DO technologies by companies in the U.S.³⁰ On a more descriptive basis, as CTIA noted in its January 17,

²⁸ *Id.* at 234, Table 120.

²⁹ See Merrill Lynch *US Wireless Matrix 3Q05* at Table 19, and UBS *Wireless 411, Version 18.0 (Revised)* at Table 26.

³⁰ *Global Wireless Matrix 3Q05*, at Table 20 (Subscriber by Technology as of 3Q05) and Table 21 (3G Launches to Date – including Cingular Wireless, Verizon Wireless, Alaska Communications, Alltel, Midwest Wireless, and Sprint Nextel). See also Meyer, “Leap, Revol clump markets,” *RCR Wireless News*, *supra*, noting Leap’s intent to begin deploying CDMA 1x EV-DO in 2006.

2006, filing in WC Docket No. 05-271, *In the Matter of Consumer Protection in the Broadband Era*:

- Broadband services, especially wireless broadband, are exploding across the country.³¹
- Verizon Wireless has launched a broadband network based on evolution data only (“EV-DO”) technology available in 171 metropolitan markets covering more than 140 million people.³²
- Sprint Nextel began to roll out its EV-DO technology in mid-2005 and now offers wireless broadband services in 208 markets.³³

³¹ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Tenth Report*, WT Docket No. 05-71, released September 30, 2005 (“*Tenth Report*”) at para. 119 (“CDMA 1xRTT and/or 1xEVDO technologies have been launched in areas of the country covering 278 million people or roughly 97 percent of the U.S. population, while GPRS, EDGE, and/or UMTS has been launched in areas covering 267 million, or about 94 percent of the U.S. population.”)

³² See Verizon Wireless Press Kit available at <http://aboutus.vzw.com/aboutusoverview.html>. See also “Verizon Wireless Completes More Than \$290 Million Texas Network Enhancement in 2005,” Press Release, Dec. 28, 2005, at <http://news.vzw.com/news/2005/12/pr2005-12-28b.html> (noting upgrades to more than 460 cell sites); “Hawaii Wireless Users Benefit from \$22 Million Investment by Verizon Wireless; Company’s Statewide Enhancements Exceed \$77 Million Over Last Four Years,” Press Release, December 22, 2005, at <http://news.vzw.com/news/2005/12/pr2005-12-22.html>; “Wireless Phone Users In Southeast Arizona Can Now Access The Nation’s Most Reliable Wireless Network; Verizon Wireless Completes Network Conversion and Adds New Site; Additional Upgrades Planned in 2006; Sierra Vista Communications Store Opens,” Press Release, November 21, 2005, at <http://news.vzw.com/news/2005/11/pr2005-12-01a.html>. Other releases note upgrades and improvements on a county-by-county basis during 2005.

³³ See http://www.sprint.com/business/products/products/wirelessHighSpeedData_tabC.jsp. See also “Business Mobility Benefits Follow Expansion of Sprint Power Vision(SM) Mobile Broadband Service,” Press Release, November 8, 2005, at http://www2.sprint.com/mr/news_dtl.do?id=9020; and see “Sprint Premieres High-Speed Entertainment and Information Services Via Sprint Power Vision(SM) Network,” Press Release, October 31, 2005, at http://www2.sprint.com/mr/news_dtl.do?id=8900.

- In December, Cingular Wireless announced that subscribers could access its BroadbandConnect service through Cingular's new 3G network.³⁴
- Alltel offers its Axxess Broadband service, which provides data rates comparable to wireless broadband, in nine metropolitan areas.³⁵
- In addition to its extensive network of wireless hotspots, T-Mobile offers mobile Internet access through its GPRS service.³⁶

These and a host of other applications and advanced services are being offered in rural and urban areas across the country by these and other carriers. As noted previously, CTIA does not have in its possession carrier-specific or location-specific data with

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- ³⁴ *Cingular Launches 3G Network*, Dec. 6, 2005 available at http://cingular.mediaroom.com/index.php?s=press_releases&item=1390. For network upgrades earlier in 2005, see other Cingular press releases. See also "Cingular Wireless Completes \$203 Million Digital Network Enhancement Plan in Washington, Prepared to Accelerate Growth in 2005; Additional sites, combined with AT&T Wireless sites, give Washington outstanding wireless coverage," Press Release, January 25, 2005, at http://cingular.mediaroom.com/index.php?s=press_releases&item=966 (describing enhanced GSM build-out, and deployment of UMTS in Seattle).
- ³⁵ *Alltel Offers Wireless Broadband Services in Little Rock*, available at <http://www.alltel.com/corporate/media/news/05/nov/n411nov1705c.html>. In fact, Alltel's wireless broadband service is also available in Norfolk, and other markets. See e.g., "Alltel offers wireless broadband service in three new cities," Press Release, December 9, 2005 at <http://www.alltel.com/corporate/media/news/05/dec/n411dec0905d.html> (announcing the availability of Alltel's Axxess Broadband service in Richmond, Raleigh, and Charlotte, NC). The Commission's *Memorandum Opinion and Order* approving the merger of Alltel and Western Wireless also noted that Alltel "provides high-speed wireless data in Arkansas, Arizona, Florida, Georgia, Louisiana, Michigan, North Carolina, New Mexico, Ohio, South Carolina, and Virginia. See *In the Matter of Applications of Western Wireless Corporation and ALLTEL Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, FCC 05-138, released July 19, 2005, at para. 4, n.7 ("services include voice calling, voice mail and messaging, along with high-speed data functions that include wireless e-mail and internet access.").
- ³⁶ See <http://www.t-mobile.com/company/about/technology.asp>. See also "T-Mobile HotSpot Announces Network Expansion, Roaming Agreements and Customer Growth," Press Release, June 13, 2005, at <http://www.t-mobile.com/company/pressroom/pressrelease139.asp>.

respect to the types of mobile data services being offered to consumers. Nonetheless, public data on these services is available on many carriers' websites (including through the zip code selection feature of multi-state operators' websites), allowing determination of the availability of these services. Thus, it is possible to determine from public sources the availability – and the on-going roll-out – of such services as (1) U.S. Cellular's easyedgeSM, (2) Alaska Communications Systems' ACS Mobile Broadband, and the broadband and mobile Internet services of (3) Cellular South, (4) Cellular One of Amarillo, (5) Dobson Cellular, (6) First Cellular of Southern Illinois, and (7) Midwest Wireless, not to mention the many other wireless applications (such as mobile television, multimedia messaging, text messaging, and wireless e-mail) now being offered across the country.³⁷ Likewise, it is possible to determine the availability of competing wireless

³⁷ See e.g., <http://easyedge.uscc.com/easyedge/jsp/faqs.jsp> (and see Brad Smith, "One Tier 2 Carrier Opens the Internet," *Wireless Week*, April 15, 2005 at <http://www.wirelessweek.com/article/CA525362.html?spacedesc=Departments>); <http://www.acsalaska.com/Cultures/en-US/Personal/Mobile+Broadband/> (available in Anchorage, Big Lake, Delta Junction, Eagle River, Fairbanks; Homer, Juneau, Kenai, North Pole, Palmer, Soldotna, and Wasilla – see <http://www.acsalaska.com/NR/rdonlyres/0F81ED15-5CD0-42EF-A630-F485A34E972C/0/1068coverage.pdf>); <http://www.cellularsouth.com/broadband/> (and see "Cellular South's Text Messaging Outpaces Already Strong U.S. Growth," Press Release, August 3, 2005, at <http://www.cellularsouth.com/about/news2005/20050803.jsp>); and http://www.cell1amarillo.com/internetServices_ratePlans.php. See also "Dobson Cellular Introduces SignalinkTM, Customers Now Have More Unlimited Data Services," Dobson Press Release, September 13, 2005 (as well as the profile of Dobson at http://www.dobson.net/dp_profile.html, noting Dobson's "services include voice calling, voice mail and messaging, along with high-speed data functions that include wireless e-mail and internet access"); and see <http://www.midwestwireless.com/Home/DataServices/MobileWirelessInternet/Default.htm> (for information about Midwest Wireless' Mobile Wireless Internet service, now available to more than 20 small communities in the upper Midwest). See also "Sprint TV Live Launches on Sprint Multimedia Handsets," Press Release, September 26, 2005, at http://www2.sprint.com/mr/news_dtl.do?id=8421; and see

broadband offerings – such as the CDMA EV-DO offerings of Alaska Communications Systems and the GSM EDGE-based offerings of GCI and Dobson Cellular One in Alaska (which also compete with Clearwire’s non-line-of-sight technology in Anchorage).³⁸

Mobile television is another application that has attracted the attention of both wireless carriers and network programmers, and is the basis for competitive offerings both inside the CMRS space and between CMRS and other providers. Informa Telecoms & Media, a British consultancy, predicts that in just five years, there will be more users of broadcast mobile television worldwide – 124.8 million – than there are currently U.S. television homes (110 million).³⁹ It has been reported that 2.4 million wireless customers in the U.S. viewed some form of mobile video in September 2005, and that approximately one million wireless subscribers will be able to watch highlights from the Olympics.⁴⁰

<http://www.firstcellular.com/pages/aboutGSM.php> (about First Cellular of Southern Illinois’ WOW Network, offering email, games, ringtones, entertainment, web access, and video and multimedia messaging).

³⁸ See e.g., “Sarana Schell, “Another Option: Wireless Broadband Provider Clearwire Steps into Anchorage Area: Got Internet?” *Anchorage Daily News*, October 20, 2005. See also Kent L. Colby, “Wireless revisited: what’s new in wireless technology? Everything,” *Alaska Business Monthly*, December 1, 2005.

³⁹ Jefferson Graham, “TV on cellphones? Funny but profitable,” *USA Today*, Sept. 27, 2005 at http://www.usatoday.com/tech/products/services/2005-09-27-mobitv_x.htm.

⁴⁰ See “M:Metrics: 2.14 Million Viewed Mobile Video in September: Although only one percent of subscribers accessed mobile video, nearly 10 percent said they are likely to view a TV or video clip in the coming year,” October 31, 2005, at <http://www.mmetrics.com/press/PressRelease.aspx?article=20051031-benchmark>. Wilson Rothman, “TV to go,” *Money Magazine*, Nov. 1, 2005, at http://money.cnn.com/magazines/moneymag/moneymag_archive/2005/11/01/8358907/index.htm. Highlights of the 2006 Winter Olympics are also being made available to wireless consumers through V CAST and MobiTV. See “U.S. Can Watch Olympics Online,” *AP*, February 12, 2006 (highlights are available to

MobiTV, Inc. (formerly known as Idetic, Inc.), a third party provider of video programming, offers a multitude of program networks, including The Discovery Channel, ESPN, MSNBC, and the Weather Channel. Sprint Nextel, Cingular Wireless, Midwest Wireless, Alltel, and Cellular South all currently offer MobiTV service in the U.S., while Centennial Wireless and Verizon Wireless offer MobiTV service in Puerto Rico.⁴¹ Subscribers to Verizon Wireless' V CAST service also have access to content from NBC, CNN, Fox Sports, and ESPN, among other content providers.⁴² And M:Metrics has found that 10 percent of wireless users expect to view some form of mobile video in 2006.⁴³ These are just some of the offerings that demonstrate we are on the verge of a wireless Renaissance. In addition to video applications, other applications or features now available with wireless devices include a variety of competing music services, and the broad suite of functions included on Smartphones and other advanced handheld

“about 1 million U.S. phone subscribers who pay for video service from Verizon Wireless's V CAST or MobiTV, which serves Cingular, Sprint and smaller U.S. carriers”).

⁴¹ *Id.* See also <http://www.mobitv.com/>, and see <http://www.verizonwirelesspr.com/indexen.php>.

⁴² Wilson Rothman, “TV to go,” *Money Magazine*, Nov. 1, 2005, at http://money.cnn.com/magazines/moneymag/moneymag_archive/2005/11/01/8358907/index.htm.

⁴³ See “M:Metrics: 2.14 Million Viewed Mobile Video in September: Although only one percent of subscribers accessed mobile video, nearly 10 percent said they are likely to view a TV or video clip in the coming year,” October 31, 2005, at <http://www.mmetrics.com/press/PressRelease.aspx?article=20051031-benchmark>. Competing forms of mobile video may include Crown Castle's Mobile Media's planned Modeo service. See Karen Brown, “Modeo's Talking Cell Phone TV, Video Broadcast Service Sets Sights on Top 30 Markets,” *Multichannel News*, January 16, 2006.

devices.⁴⁴ The iTunes-equipped wireless phone, the satellite-radio equipped phone, and the potential for the m-commerce and proximity payments enabled by wireless handsets – all figure in the evolving wireless marketplace.⁴⁵

These developments are having a spillover effect on other parts of the economy. The existence of these outlets for new content are helping drive the development of new content specifically aimed at the mobile user.⁴⁶ Beyond that, the use of wireless voice and data by other industries is having a ripple effect, both in enhancing the productivity

⁴⁴ See e.g., “Gadget Check: Another iTunes phone,” *Kansas City Star*, February 5, 2006; Terry Maxon, “Not so long ago, music and cell phones didn’t go together,” *Wichita Eagle*, February 11, 2006 (describing Sprint Music Store and Verizon V CAST Music). See also “Verizon Wireless Unveils V CAST Music Service,” *Communications Daily*, January 6, 2006. Subscriber interest in a variety of applications has been surveyed by a number of companies, from third-party companies such as Harris Interactive to wireless service providers themselves. See e.g., “2005 Sprint U.S. Wireless Consumer Usage Study,” at <http://www2.sprint.com/mr/cmastaticfiles/non-landing/documents/PressKit/wirelessurvey05.pdf>.

⁴⁵ See e.g., Del Bryant, “New stream of revenue is set to flow from digital,” *Music Week*, December 17, 2005 (noting Sirius Satellite Radio subscription radio offering for wireless phones); see also “Motorola enters thorny m-commerce market,” *RCR Wireless News*, February 13, 2005, at 15 (describing Motorola’s downloadable m-commerce application).

⁴⁶ See e.g., “Cingular Launches First Ever Made-for-Mobile Concert Series, Cingular Sounds Live; Cingular Sounds Live will give customers exclusive access to see and hear concert performances by some of today's most popular artists - all from their wireless phone,” Press Release, February 9, 2006, at http://cingular.mediaroom.com/index.php?s=press_releases&item=1451. See also “Twentieth Television and Verizon Wireless Enter An Agreement On Direct-To-Mobile Series For New V CAST Service; Twentieth Television to Produce 52 One-Minute “Mobisodes” of Two Original Soap Operas for Wireless Distribution with Verizon Wireless and Vodafone,” January 24, 2005, at <http://news.vzw.com/news/2005/01/pr2005-01-24.html>.

of other industries and, as CTIA's Wireless Fashion shows have demonstrated, in prompting other industries to develop products to accommodate new wireless devices.⁴⁷

CTIA's own semi-annual survey has elicited from providers *aggregate* data about the number of active web-capable devices in active service as of June 30, 2005 (more than 100 million were reported), as well as the fact that one-third of all reported subscribers were active users of wireless data applications at that point (more than 63 million were reported as of the end of June). More granular information about the use of specific data applications by consumers is available from companies such as M:Metrics and Telephia. For example, M:Metrics' surveys of wireless subscribers track monthly consumption of content and applications by type – including text messaging, news and information retrieval, ringtone or game downloads, photo-messaging, and other activities.⁴⁸ Likewise, Telephia's research generates data on the demographic

⁴⁷ See e.g., See Roger Entner and David Lewin, *Impact of the US Wireless Industry on the US Economy*, Ovum / Indepen, September 2005, at pages 20-23 (noting productivity gains from the adoption of wireless data services by U.S. businesses in the areas of personnel management, health care, field service automation, sales force automation, and inventory loss reduction) at http://files.ctia.org/pdf/Final_OVUM_Report_Economy1.pdf. See also Narissa Pacio, "Designs let you gear up in style," *Wilkes-Barre Times Leader*, February 12, 2006;. See also the "Fashion in Motion" activities scheduled for the CTIA WIRELESS 2006 show at http://www.ctiawireless.com/general/mobile_entertainment.cfm.

⁴⁸ See e.g., "M:Metrics Reports that in Battle of Portals Yahoo! Has Early lead in Mobile Domain: 6.7 percent of mobile subscribers access Yahoo! Branded services compared with 4.4 percent for second-place AOL," January 30, 2006, at <http://www.mmetrics.com/press/PressRelease.aspx?article=20060130-portals> (noting 33.3 percent of subscribers sent or received text messages in December 2005). See M:Metrics Benchmark Survey: When it Comes to Ring(tone) Shopping, Males and Females Prefer Different Bling, Ringtones are fashion, mobile music is another gadget," September 26, 2005, at <http://www.mmetrics.com/press/PressRelease.aspx?article=20050926-ringtones-gender> (noting musical genre preferences by gender).

composition of wireless voice users, the penetration of data subscribership by demographic group among the top providers, and the top mobile Internet categories accessed by consumers.⁴⁹

D. Rural Market Trends

The Commission's *Tenth Report* correctly concluded "CMRS providers are competing effectively in rural areas."⁵⁰ This echoed the Commission's earlier findings to the effect that "effective CMRS competition does exist in rural areas" and that, in spite of the fact that it "appears that, on average, a smaller number of operators are serving rural areas than urban areas, this difference does not necessarily indicate that effective CMRS competition does not exist in rural areas."⁵¹

In fact, the National Telecommunications Cooperative Association's *NTCA 2005 Wireless Survey* recently noted that among its members providing wireless services, "survey respondents are facing considerable competition from other carriers – the

⁴⁹ See "Cell Phone Usage Highest Among African-American and Hispanic Consumers, According to Telephia," January 17, 2006, at <http://www.telephia.com/documents/CVMPressReleaseJanuary2006FINAL.pdf>. See also "One in Five Wireless Phone Users Subscribe to Data Packages, According to Telephia Corporation," September 27, 2005, at <http://www.telephia.com/documents/DataPackageSubscribersPressRelease09.27.05.pdf>; and see "E-mail, Weather, and Search Sites are Most Popular Categories for Mobile Internet Use, According to Telephia," September 7, 2005, at <http://www.telephia.com/documents/InternetPressRelease090705FINALREVISED.pdf>.

⁵⁰ *Tenth Report* at para. 95.

⁵¹ *Ninth Report* at para. 111.

average respondent indicated that their company competes with between two and five other carriers.”⁵²

As the Commission noted in the *Memorandum Opinion and Order* granting the applications for the merger of Alltel and Western Wireless, “the mobile telephony services sector is characterized by ongoing growth as well as technological change. In particular, next generation technologies are being gradually rolled out by a number of carriers.”⁵³ As the Commission noted then, Alltel and Verizon Wireless launched EV-DO networks in early 2005, while Dobson Cellular launched EDGE-based service in the third quarter of 2004.⁵⁴ Other carriers, including large and small, regional and local providers, have deployed new technologies and overlaid existing networks in order to meet consumers’ evolving expectations and needs.⁵⁵

⁵² See “NTCA 2005 Wireless Survey Report,” January 2006, on-line at http://www.ntca.org/ka/ka-3.cfm?content_item_id=3980&folder_id=644.

⁵³ *Alltel-Western Wireless Order* at para. 73.

⁵⁴ *Id.* at n.192.

⁵⁵ Including, as previously noted, Alaska Communications Systems, Cellular One of Amarillo, Cellular South, and U.S. Cellular, as well as companies like Bluegrass Cellular, Cellcom, Edge Wireless, First Cellular of Southern Illinois, Highland Cellular, Midwest Wireless, NTELOS, and Rural Cellular Corporation (Unicel). See e.g., Sue Marek, “Down Home with Bluegrass Cellular; Tier 3 operator offers some progressive services,” *Wireless Week*, May 15, 2005, at <http://www.wirelessweek.com/article/CA601561.html?spacedesc=Departments> (noting transition from analog, to TDMA, to CDMA, and launch of WAP, BREW, and PTT); “Cellcom activates digital cell sites in area,” Press Release, December 30, 2004, at <http://www.nsighttel.com/news/press.php?id=32> (describing additions to 182 digital cell sites serving northeastern Wisconsin); see also Jason Ankeny, “How Nsight Navigates the Rural Realities of Small-Town Wireless,” *Telephony Online*, May 23, 2005, at http://telephonyonline.com/mag/telecom_nsight_navigates_rural/ (describing the strategic approach of Nsight’s affiliate, Cellcom, and their view that “wireless data represents only one component of Nsight’s future”). And see Edge Wireless overview at <http://www.edgewireless.com/>; Written Statement of Tom Attar of

As the Commission observed in *Eighth Report*, companies providing data and comments for the report indicated “nationwide and urban price trends have acted to constrain prices in rural areas, even where the total number of operators may be lower.”⁵⁶ Further, as the Commission has noted, the “one rate” plan “is one notable example of an independent pricing action that altered the market and benefited consumers.”⁵⁷ Likewise, as the Commission noted in the *Ninth Report*, a number of other innovations (e.g., in-network mobile-to-mobile calling and effectively unlimited local calling) have been adopted by companies large and small across the country.⁵⁸ And, as past years have

Highland Cellular, Inc. on behalf of the Rural Cellular Association before the Subcommittee on Rural Enterprises, Agriculture and Technology, Committee on Small Business, House of Representatives, September 25, 2003, at www.rca-usa.org/files/tomattar.pdf; <http://ir.ntelos.com/index.cfm?pagesect=more>; <http://www.midwestwireless.com/Home/AboutUs/CurrentArticles.htm#Articles013106> (numerous articles describing Midwest Wireless’ deployment of new CMDA cell sites supporting advanced services and features, made possible by universal service funding); and “Unicel Invests \$1.2 Million in Iron Range to Build Advanced Wireless Network, Rural Minnesota State Economy, Communities to Benefit,” Press Release, October 25, 2005, at <http://www.rccw.com/aboutus/news/detail/6>.

⁵⁶ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eighth Report*, 18 FCC Rcd. 14783 (2003) (*Eighth Report*) at para.13, and n.45 (citing the Comments of Dobson to the effect that “‘Clearly, if price is an indicator of the level of competition, the price reductions spawned by wireless competition in urban markets have come to rural areas.’ Dobson Comments, at 3. Dobson also explained at the Public Forum that ‘small market carriers ... are subject to the same competitive pressures of large market carriers. Because of national advertising and the Internet, consumers all over the country are educated about nationwide rate plans and services enabled by digital technology.’”) The Commission concluded in the *Eighth Report* that companies were competing effectively in rural areas. *See id.* at para. 120. *See also Ninth Report* at para. 111.

⁵⁷ *Id.* at para. 94.

⁵⁸ *Ninth Report* at paras. 113-114 (noting adoption of in-network calling by large carriers), and paras. 215-217 (re unlimited local calling plans offered by many

indicated, there is “evidence of increasing customer usage and declining per minute pricing in rural areas, similar to trends that we have seen nationally.”⁵⁹

As the *Eighth Report* noted, the NTCA reported “many rural customers have access to the same state-of-the-art wireless technologies available to their urban counterparts.”⁶⁰ Review of individual carriers’ websites today demonstrates that this observation holds up, as their websites outline the technologies and services available in rural markets. And consumers enjoy a rich variety (and number) of rate plan choices in both rural and urban markets, in coastal cities and small towns, at competitive rates – as reference to the www.myrateplan.com website and individual carriers’ websites reveals.⁶¹

local and regional companies). *See also Tenth Report* at para. 200 (no fewer than 17 regional and local competitors offer unlimited local calling plans in 41 states).

⁵⁹ *Ninth Report* at para. 110 (citing the Rural Cellular Association’s Keisling Associates survey).

⁶⁰ *Eighth Report* at para. 118. Moreover, the NTCA’s more recent *2005 Rural Youth Telecommunications Survey* of 5,200 rural youth (from 14 to 23) found that “two-thirds (67%) of survey respondents indicated they currently have a cellular phone, and utilize a variety of features on those wireless phones – including voice calling, text messaging, video gaming, and instant messaging, among others” – and that “Cellular telephone service emerged as the telecommunications service considered most essential by survey respondents.” “NTCA/FRS Survey Explores Rural Youth Telecommunications Preferences,” Press Release, September 12, 2005, at http://www.ntca.org/ka/ka-3.cfm?content_item_id=3638&folder_id=522.

⁶¹ For example, for Mountain View, CA, (zip code 94035 – population around 73,000 – *see* <http://www.ci.mtnview.ca.us/welcome.htm>) the www.myrateplan.com website lists 48 single line plans ranging from \$19.99 to \$199.99; 26 family plans ranging from \$59.98 to \$299.99; and six traditional prepaid, four hybrid, and four “all you can talk” local calling plans. The listed service providers (including facilities-based licensees and MVNOs) are Cingular, Sprint Nextel, T-Mobile USA, Verizon Wireless, and MetroPCS, Net10, TracFone, and Virgin Mobile. In Berrysburg, PA, (zip code 17005 – population about 345 – *see* <http://www.city-data.com/city/Berrysburg-Pennsylvania.html>) www.myraplan.com lists 45 single line plans, ranging from \$19.99 to \$199.99, 17 family plans ranging from \$59.98 to \$299.99, four traditional and four hybrid plans. The listed service providers include Cingular, Sprint Nextel, T-Mobile

There are multiple distribution channels for wireless service in rural and urban areas – including Wal-Mart, RadioShack, and Internet-based sales channels (including AARP, third-party websites like www.Amazon.com, www.myrateplan.com, www.MountainWireless.com, and carrier websites), as well as brick-and-mortar storefronts operated by the carriers, and by agents for the carriers serving those markets.⁶² And, as the Commission has recognized in past competition reports, these markets are served by small and regional carriers, as well as national carriers, all of whom are competing vigorously to win and satisfy customers.

USA, Verizon Wireless, Net10, and TracFone. Review of individual carriers' websites, like that of South Central Communications of Southern Utah reveals this company offers eight individual plans, six family plans, two unlimited personal plans, two unlimited business plans, and three nationwide plans. *See* <http://www.scwireless.com/cellular/plans/>. UBET Communications (serving the Uintah Basin, in Utah) offers five local calling plans, five extended local calling plans, five national plans, five custom calling plans, three corporate plans, and additional add-on or sharing options. *See* <http://www.ubta-ubet.com/subs/wireless/services.php>. In Fargo, OK (zip code 73840 – population about 315 – *see* <http://www.city-data.com/city/Fargo-Oklahoma.html>) Cellular One (Dobson Cellular Systems) offers a statewide unlimited calling plan for \$50, two regional plans, nine national plans, five EVO plans, and more – *see* https://www.celloneusa.com/ECCellPortal/ECCell.portal?_nfpb=true&portlet_shoppingcart2_2_actionOverride=%2Fportlets%2Fshoppingcart2%2FdisplayPlans&windowLabel=portlet_shoppingcart2_2&portlet_shoppingcart2_2filterBy=filter_gsm&pageLabel=ECCell_PlansAndFeatures_PlansAndCoverage. Illinois Valley Cellular (serving an eight-county RSA in Illinois) offers four local calling plans, four national calling plans, two “safe and sound” plans, prepaid service, and a variety of calling and messaging options. *See* <http://www.ivcellular.com/history.html> and <http://www.ivcellular.com/>.

⁶² Telephia recently announced that “Among recent wireless purchasers who bought their phone within the last 6 months at a major U.S. retailer . . . 32 percent bought their handset at Wal-Mart.” *See* “Wal-Mart and RadioShack Secure 60 Percent of the Major Retailer Market Share for Recent Mobile Device Purchases, According to Telephia,” December 7, 2005, at <http://www.telephia.com/documents/DeviceRetailFINAL12.7.05.pdf>.

III. Competition Works for the Economy

A. Economic Investment and Contributions

As the foregoing has indicated, the wireless industry has continued its ongoing investments in the networks and other facilities needed to deliver wireless service – with almost \$174 billion in cumulative capital investment reported as of year-end 2004.⁶³ Subsequently, CTIA’s semi-annual wireless survey elicited data from carriers indicating that wireless providers made another \$13.05 billion in incremental capital investment in the first six months of 2005 alone.⁶⁴ Financial analysts at Merrill Lynch and UBS have reported that capital investment for the first three quarters of 2005 were up year-over-year from the first three quarters of 2004.⁶⁵ Merrill Lynch subsequently noted that wireless investment has been steady, and estimated that capital investment by national carriers alone will increase six percent in 2006.⁶⁶ UBS has noted its perspective that “greater usage from new and existing subscribers, as well as 3G build-out, has fueled capital expenditures.”⁶⁷ Merrill Lynch has also provided their perspective on the

⁶³ See *CTIA’s Wireless Industry Indices, op cit.* at 150.

⁶⁴ *Id.*

⁶⁵ Colette Fleming and Timothy Lee, *US Wireless 411, Version 18.0 (Revised)*, UBS Global Equity Research, January 3, 2006, at 69 and Table 43 (Capital Expenditures). See also David Janazzo, *et al.*, *US Wireless Services, US Wireless Matrix 3Q 05*, Merrill Lynch, November 28, 2005, at 37 (Table 30, Wireless Capital Expenditures).

⁶⁶ David Janazzo, *et al.*, “Tower Outlook Still Positive, Raising POs,” Merrill Lynch, January 31, 2006, at 3.

⁶⁷ *US Wireless 411, Version 18.0 (Revised)*, at 69.

potential growth in investment based on projected growth in subscribership and usage in the context of their coverage of the tower siting industry.⁶⁸

While CTIA's semi-annual wireless industry survey reports the number of wireless subscribers, total wireless service revenues, and direct carrier employees in the U.S., and the Bureau of Labor Statistics' Quarterly Census of Employment and Wages derives employment and payroll data for wireless providers, a complete perspective on the contributions of the wireless industry to the U.S. economy must be assembled from multiple sources.

One recent report which sought to quantify the contributions of the wireless industry to the U.S. economy was performed by Ovum / Indepen at CTIA's request.⁶⁹ This study found that in 2004 the wireless industry generated \$118 billion in revenues and contributed \$92 billion to the U.S. Gross Domestic Product. The study also found that Americans extract far more economic and social value from mobile services than Europeans do. The use of wireless telecommunications services in the U.S. generated a consumer surplus of \$157 billion per annum in 2004. Were U.S. carriers to charge at European Union levels, Ovum estimates that this consumer surplus would be reduced by 50 percent, demonstrating that U.S. consumers and businesses enjoy substantially greater economical welfare from wireless services than their EU counterparts do.⁷⁰

⁶⁸ David Janazzo, *et al.*, *Tower Operators: Levered Wireless Plays*, Merrill Lynch, October 17, 2005.

⁶⁹ See Roger Entner and David Lewin, *Impact of the US Wireless Industry on the US Economy*, Ovum / Indepen, September 2005, at http://files.ctia.org/pdf/Final_OVUM_Report_Economy1.pdf

⁷⁰ *Id.* at 10 (regarding GDP contribution) and 24 (regarding consumer surplus).

IV. Continuing the Success Story

A. Path Forward to Enable Continued Success: A National, Deregulatory Framework

The incredible and unprecedented growth of the mobile wireless industry over the last decade would not have been possible without the environment of regulatory constraint created by the Omnibus Budget Reconciliation Act of 1993. In December 1995, there were 34 million mobile wireless subscribers in the United States. As of December 2005, there were more than 200 million mobile wireless subscribers. This growth has occurred even as consumers have received lower monthly bills, cheaper minutes, and new and innovative services. The average cost of wireless services has declined over time – even as wireless service offerings have expanded. In June 1992, before the Omnibus Budget Reconciliation Act of 1993, the average wireless bill was \$68.51 per month. As of June 2005, the average wireless bill was less than \$50 per month. In fact, in 1992 dollars, the average wireless bill in 2005 was equal to \$35.57 – almost less than half the earlier bill. For many customers, nationwide bucket of minute plans have made wireless the service of choice for making long-distance calls. In 1995, the average wireless customer used about 115 minutes of use per month. In 2005, the average wireless customer used almost 700 minutes of use per month. In 1995, there were 37 billion minutes of use on wireless networks. In 2004, the wireless industry crossed the one trillion minutes of use threshold. Now, wireless carriers are in the midst of rolling out mobile broadband services. From a once local and high-priced voice service, wireless has become an unbounded array of affordable national and regional

service offerings, as the competitive landscape has driven on-going innovation in services and technologies, and lowered prices for consumers.⁷¹

Although CTIA believes the best is yet to come, storm clouds are on the horizon. A patchwork quilt of state-by-state regulations threatens to undermine the ability of wireless carriers, suppliers, and developers to collectively bring new services to consumers and business users across the country.

Currently, lawsuits pending in multiple states threaten to hinder the Commission's national regulatory framework for wireless services. These cases stand in direct conflict with the Commission's authority under Section 332 to regulate the "rates charged" by CMRS carriers. Any state court decision determining the reasonableness of the rates or rate elements of a carrier would constitute the type of rate regulation Section 332 was intended to prevent. The ability of carriers to develop the types of services that consumers desire is threatened, and the Commission must act to protect a market-oriented deregulatory framework for wireless services. The Commission should grant CTIA's petition asking the FCC to declare that early termination fees are "rates" under Section 332(c)(3) subject solely to federal authority.⁷²

In addition, state legislation regulating carrier billing practices threatens to balkanize the regulatory environment for wireless services. The wireless industry has developed sufficient guidelines that ensure customer billing information is clear and non-misleading while enabling carriers the flexibility to differentiate themselves in the

⁷¹ See Commissioner Kevin J. Martin, "Wireless and Broadband: Trends and Challenges," Dow Lohnes-Comm Daily Speaker Series, October 15, 2004, at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253261A1.pdf.

⁷² See Petition of the Cellular Telecommunications & Internet Association For An Expedited Declaratory Ruling, WT Docket No. 05-194, filed March 15, 2005.

market. State legislation would undue these market-oriented solutions and hinder the advancement of a competitive CMRS marketplace. Each instance of state regulation will exponentially complicate the provision of mobile wireless services that are interstate in nature. Even regulation by a small handful of states threatens to undermine the nationwide and regional calling plans that now are so commonly purchased by consumers. Consumers in rural areas, where the cost of service tends to be higher, are particularly threatened by regulation that could put an end to uniform nationwide calling plans. In addition, both large national and small regional wireless carriers will be harmed by inconsistent state-by-state regulations. The Commission should preempt state laws that would conflict with its national framework for carrier billing practices and regulate only where the market fails to address consumer needs.

B. Path Forward to Enable Continued Success: Spectrum

Commission action on several pending proceedings would help solve issues which are frustrating wireless carriers' ability to promote the benefits of competition for consumers, especially in rural markets. As the Commission has stated, access to sufficient spectrum is a "crucial ingredient" to improvement of current services and the deployment of mobile wireless broadband.⁷³ Therefore, the Commission must ensure that wireless carriers have access to the spectrum that they need.

The availability of licensed spectrum assists service providers by ensuring a predictable spectrum environment and protection from interference. To ensure that the June 29, 2006 Advanced Wireless Services ("AWS") auction takes place on time, the

⁷³ *Connected & On the Go – Broadband Goes Wireless*, Wireless Broadband Access Task Force, Federal Communications Commission, February 2005, at 46.

Commission must act quickly on numerous issues such as auction procedures, relocation of incumbent licensees, and designated entity issues. Additionally, CTIA recommends that the Commission modify certain technical rules (*e.g.*, base station radiated power limits) to promote rural broadband deployment. The Commission should modify its EIRP rules to allow base stations to transmit at either (1) the current limits, or (2) a comparable power spectral density limit.⁷⁴ A power spectral density limit would facilitate the use of new wideband technologies that are more costly to deploy under the current rule.

C. Path Forward to Enable Continued Success: Intercarrier Compensation and Universal Service

The wireless industry has a tremendous and unprecedented track record in rapidly bringing high-quality, affordable telecommunications services to consumers located in rural areas. This track record would be even more impressive if the Commission took steps to enforce existing rules and statutes meant to ensure that wireless carriers can compete on an even footing against wireline incumbent local exchange carriers in rural areas.

Two areas of particular concern are intercarrier compensation and universal service. As the Commission considers reforming these systems, CTIA believes important lessons can be learned from the incredible growth of the wireless industry. Wireless

⁷⁴ See Letter from Paul Garnett, CTIA-The Wireless Association®, to Marlene Dortch, FCC, In the Matter of Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03-264, filed October 20, 2004. See also Comments of CTIA–The Wireless Association®, In the Matter of Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket No. 03-264, filed December 19, 2005.

carriers have been successful, in part, because of a regulatory environment that rewards efficiency and innovation. CTIA believes that intercarrier compensation and universal services rules should replicate those values as much as possible.

CTIA has proposed a market-based solution that would address the inefficiency and discrimination of these systems. First, the Commission should transition to a Mutually Efficient Traffic Exchange (“METE”) system for intercarrier compensation.⁷⁵ This would establish a basic obligation for an originating provider to assume the costs of delivering traffic to the terminating provider’s “network edge,” provide for nondiscriminatory points of interconnection, and set federal rates for transit/transport based on efficient (forward-looking) costs. Second, the universal service high-cost mechanism should be modified to a unified mechanism that calculates support for incumbents and competitors based on the most efficient technology available (whether wireline or wireless). The Commission must also ensure that support continues to be available to both incumbent and competitive Eligible Telecommunications Carriers on a non-discriminatory basis. Finally, the Commission should adopt a numbers and capacity based universal service contribution methodology. Under this method, all switched connections would be assessed based on working telephone numbers and non-switched connections would be assessed based on capacity.⁷⁶ This is a fair means to ensure the continued viability of the universal service fund without unfairly discriminating between different technologies and between different consumer groups.

⁷⁵ Comments of CTIA – the Wireless Association®, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, filed May 23, 2005, at 10.

⁷⁶ See Letter from Paul Garnett, CTIA-The Wireless Association®, to Marlene Dortch, FCC, CC Docket No. 96-45, filed February 15, 2006.

CONCLUSION

With multiple service providers available to effectively all Americans, the on-going investment in and build-out of wireless systems, the continuing introduction of new service options, declining prices, and increasing usage by consumers, the wireless industry – and the wireless marketplace – is clearly delivering effective competition, and competitive benefits, to consumers. Indeed, wireless competition is delivering for consumers and the economy.

CTIA hopes that the information provided in these comments assists the Commission in preparing its *Eleventh Annual CMRS Competition Report*.

Respectfully submitted,

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